

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES MORRISON,

Plaintiff,

v.

JEREMY MAURER,

Defendant.

No. C 09-2736 PJH

**ORDER GRANTING MOTION
TO TRANSFER AND VACATING
HEARING DATE**

Before the court is a motion to transfer filed by plaintiff James Morrison ("Morrison"), and defendant Jeremy Maurer's ("Maurer") opposition thereto. Because the court finds that oral argument is unnecessary and would not be helpful, the hearing date of July 29, 2009 is VACATED pursuant to Civil Local Rule 7-1(b). For the reasons stated below, plaintiff's motion to transfer is GRANTED:

28 U.S.C. § 1446 sets forth the procedure for removal of civil actions from state court to federal court, and expressly provides: "A defendant or defendants desiring to remove any civil action ... from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal...". 28 U.S.C. § 1446(a). It is undisputed that the instant action was filed in the Superior Court Division of Mecklenburg County, North Carolina on or around February 15, 2008. See Notice of Removal, ¶ 1. Thus, in order to effect a proper removal of this action to federal court pursuant to section 1446(a), defendant was required to remove the action to the appropriate federal district court in North Carolina, specifically, the federal district court for the Western District of North Carolina.

Having improperly removed the present action to this court, the court hereby orders

1 the action TRANSFERRED to the Western District of North Carolina. See 28 U.S.C. §
2 1406 (allowing transfer or dismissal for purposes of curing venue defects). Should
3 defendant intend, as he argues, to file another motion to transfer the action to an
4 alternative district once the transfer order herein is effected, defendant is free to do so.

5 In view of the foregoing, it is unnecessary for the court to consider plaintiff's
6 concurrently filed request for judicial notice and motion to strike defendant's evidence.

7 Both requests are administratively terminated.

8 **IT IS SO ORDERED.**

9 Dated: September 1, 2009



PHYLLIS J. HAMILTON
United States District Judge